GOH CHAI HUAT

v.

LEE MUI PING & ORS

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
SITI NORMA YAAKOB JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: Q-04-55-98]
21 JULY 2000

DAMAGES: *Fatal accident - Loss of future earnings - Whether allowed - Civil Law Act 1956, ss. 7(3) & 8(2)(c) - Whether only funeral expenses allowed - Claim for loss of EPF contributions - Proof of*

CIVIL LAW ACT: *Damages - Fatal accident - Loss of future earnings - Whether allowed - Civil Law Act 1956, ss. 7(3) & 8(2)(c) - Whether only funeral expenses allowed - Claim for loss of EPF contributions - Proof of*

The deceased who was riding pillion on a motorcycle ridden by the 4th respondent was killed when the motorcycle collided with a land cruiser driven by the 2nd respondent. The deceased's father ('the appellant') brought an action against the 1st respondent (owner of land cruiser), the 2nd respondent, the 3rd respondent (owner of motorcycle) and the 4th respondent. The sessions judge apportioned liability at 85% and 15% against the 2nd and 4th respondents respectively. This was the appellant's appeal against the decision of the High Court: (i) enhancing the sessions judge's award of RM3,000 for pain and suffering to RM6,000; and (ii) affirming the sessions judge's dismissal of the appellant's claim for loss of future earnings as well as for loss of EPF contributions.

Held:
Per Siti Norma Yaakob JCA

[1] In enhancing the sessions judge's award of RM3,000 for pain and suffering to RM6,000 the High Court had considered all the relevant factors and its decision was therefore right and proper. The appellant was unable to show why appellate interference with that decision was necessary.

[2a] Section 7 of the Civil Law Act 1956 ('CLA') makes no provision for claims for loss of future earnings; the sessions judge and the High Court were therefore right in disallowing the appellant's claim for the same.

[2b] Section 8(2)(c) of the CLA only allows claims for funeral expenses and **not** for loss of future earnings; the sessions judge and the High Court were right in so holding.

[3] The appellant's claim for loss of EPF contributions was rightly rejected by the sessions judge and the High Court for lack of evidence. The mere fact that the deceased was working in his lifetime was insufficient to show that he and his employers had contributed to the EPF. There must be proof of such contributions and a letter from the EPF would have sufficed. No such evidence was before the courts below.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Si mati meninggal dunia apabila motosikal responden ke-4 yang diboncengnya berlanggar dengan land cruiser yang dipandu oleh responden ke-2. Bapa kepada si mati ('perayu') telah membawa satu tindakan terhadap responden pertama (tuan punya land cruiser tersebut), responden ke-2, responden ke-3 (tuanpunya motosikal) dan responden ke-4. Hakim mahkamah sesyen mengumpukkan liabiliti 85% dan 15% terhadap responden ke-2 dan ke-4 masing-masingnya. Ini adalah rayuan perayu terhadap keputusan Mahkamah Tinggi: (i) menambahkan award hakim mahkamah sesyen dari RM3,000 ke RM6,000 untuk kesakitan dan penderitaan; dan (ii) mengesahkan keputusan hakim mahkamah sesyen menolak tuntutan perayu untuk kehilangan pendapatan masa depan dan kehilangan sumbangan KWSP.

Diputuskan:
Oleh Siti Norma Yaakob HMR

[1] Dalam menambah award hakim mahkamah sesyen dari RM 3,000 kepada RM 6,000 untuk kesakitan dan penderitaan, Mahkamah Tinggi telah menimbang kesemua fakta-fakta yang relevan dan dari itu keputusannya adalah betul dan sesuai.

[2] Seksyen 7 Akta Undang-undang Sivil 1956 ('AUS') tidak mempunyai sebarang peruntukan untuk tuntutan kehilangan pendapatan masa depan; dari itu keputusan hakim mahkamah sesyen dan Mahkamah Tinggi menolak tuntutan perayu tersebut adalah betul.

[3] Seksyen 8(2)(c) AUS hanya membenarkan tuntutan untuk belanja pengurusan mayat dan tidak untuk kehilangan pendapatan masa depan; hakim mahkamah sesyen dan Mahkamah Tinggi adalah betul memutuskan sedemikan.

[4] Tuntutan perayu untuk kehilangan sumbangan KWSP wajar ditolak oleh hakim mahkamah sesyen dan Mahkamah Tinggi kerana kekurangan keterangan. Fakta simati bekerja semasa hidupnya semata tidak cukup untuk menunjukkan yang beliau dan majikannya telah menyumbang ke KWSP. Mesti terdapat bukti yang sumbangan dibuat dan sepucuk surat pengesahan dari KWSP adalah memadai. Tidak terdapat sebarang keterangan seperti ini di mahkamah bawah.

[Rayuan ditolak.]

Legislation referred to:
Civil Law Act 1956, ss. 7(3), 8(1), (2)(c)

For the appellant - Tai Choi Yu; M/s Tai Choi Yu & Co
For the 1st & 2nd respondents - Marina Foo; M/s Tang & Partners
For the 3rd respondent - Lai Peng Seng; M/s Lai & Co
For the 4th respondent - Mahinder Singh Sandhu; M/s MS Sandhu & Co

[Appeal from High Court, Miri; Civil Appeal No: 12-06-96 (MR)]

Reported by Alex KC Lee

JUDGMENT

Siti Norma Yaakob JCA:

In this running down appeal, two actions were originally filed in the Sessions Court at Miri in respect of claims for damages arising from the same accident. That accident was between a land cruiser and a motorcycle ridden with a pillion rider. The rider of the motorcycle, the 4th respondent before us, sued the owner and driver of the land cruiser, the first and second respondents for damages suffered as a result of the accident. The pillion rider succumbed to his injuries and his father, the appellant, filed separate proceedings on behalf of his deceased sons's estate against the first and second respondents, as well as the third respondent as owner of the motorcycle and the fourth respondent. In the Sessions Court, both suits were consolidated and liability was apportioned at 85% as against the second respondent, and 15% as against the fourth respondent.

This appeal is only concerned with the award of damages granted to the estate of the deceased for which the appellant maintains that two heads of award were inadequately low and that the dismissal of a third head was wrong in law.

The three heads of damages that were claimed and questioned before us relate to

(1) pain and suffering for which RM3000 was awarded by the Sessions Court on a 100% liability but on appeal the High Court raised it to RM6000.

(2) loss of future earnings which was disallowed by the Sessions Court under s. 7(3) of the Civil Law Act 1956 ("the Act") and this finding was confirmed by the High Court on appeal.

(3) loss of EPF contributions which was also disallowed by the Sessions Court for lack of proof and confirmed on appeal by the High Court.

The accident happened on 12 January 1992, at 9pm. The deceased was bleeding profusely from the nose, mouth and ears. He had a wound above his right eye and he suffered intracranial haemorrhage secondary to base skull fracture. The evidence shows that as a result of such intensive injuries, the Sessions Court made a finding that he became unconscious after 10.20pm and he succumbed to his injuries at midnight of 13 January 1992. In short he was in agonising pain for almost 1 1/2 hours and deprived of the amenities of life for three hours and for such pain and suffering, his estate was awarded RM3000 by the Sessions Court. On appeal the High Court took into considerations the drop in the value of money and doubled the award to RM6000. Before us, no further factor was submitted why we should interfere with the award and on that ground we confirmed the award to have been rightly and properly made as the High Court had considered all relevant factors.

The Sessions Court disallowed the claim for loss of future earnings on the ground that s. 7 of the Act under which the appellant bases his claim, does not make any provision for such a loss. Before us, Mr. Tai Choi Yu, learned counsel for the appellant pleaded that he is entitled to make such a claim under s. 8(2)(c) of the Act. For ease of reference we reproduce the relevant provisions of ss. 8(1) and (2)(c) as they must be read together.

8. Effect of death on certain causes of action.

(1) Subject to this section, on death of any person all causes of action... vested in him shall survive... for the benefit of his estate:

Provided...

(2) where a cause of action survives aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person -

(a) ...

(b) ...

(c) where death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent or his death, except that a sum in respect of funeral expenses may be included.

We interpret s. 8(2)(c) to mean that the appellant is only entitled to claim funeral expenses and not any other claim which amounts to a loss to the estate consequent upon the death. A claim for loss of earnings is caught by that sub-s as being an item of damages which is not allowed by law. As such, both the Sessions Court and the High Court were correct when they disallowed that claim.

Lastly we come to the claim for EPF contribution which was also disallowed by the Sessions Court a decision that was also confirmed to have been rightly decided by the High Court on the ground of lack of evidence. The fact that the deceased was working during his lifetime is not sufficient to show that he and his employer contributed to the EPF. There must be evidence of such contributions and a letter from the EPF would be sufficient to establish that fact. Such evidence was not before the Sessions Court and we find no reason to disagree with the findings of both the Sessions and the High Courts.

For reasons appearing above, we had dismissed this appeal and confirmed the orders of the High Court. RM800 agreed costs was also ordered to be paid out to the first, second and 4th respondents and the deposit to be refunded to the appellant.